

REMARKS

The Examiner has requested information under 37 C.F.R. §1.105 in order for the examiner to properly consider patentability of the claimed invention under 35 U.S.C. §102(b).

In paragraph 1, the Examiner has requested information regarding the relationship between North Dakota State University (NDSU) and any wholesale nurseries that may have purchased or distributed the claimed invention. Applicant submits that materials sent to wholesale nurseries were sent under a Material Transfer Agreement (MTA) between NDSU and the individual nurseries. Under this Agreement, the individual nurseries agreed to evaluate the material only and not distribute it to third parties. The Agreement contained confidentiality provisions concerning the materials. Nurseries expressing an interest in propagating and selling this cultivar in the future were sent Licensing Agreements; however, in no instance were offers to license made nor Licensing Agreements sent until after the filing date of the subject plant patent application on the claimed cultivar, i.e. March 18, 2004.

In paragraph 2, the Examiner has requested information as to whether Dr. Herman offered for sale or provided information as to where to purchase the tree in reference to page 4 of North Dakota Nursery News and page 3 of 2002 Annual Highlights Agriculture at North Dakota State. Applicant submits that Dr. Herman did not offer for sale or provide information as to where to purchase the tree.

In paragraph 3, the Examiner has requested information regarding whether the tree was in public use or offered for sale at NDSU Research Arboretum, at any NDSU research extension center, at urban forests in Grand Forks, Fargo or Bismarck, at North Central Regional Plant Introduction Station in Ames, IA, or at any wholesale nurseries. Applicant submits that reference made to this lilac in the 2002 Annual Highlights of Agriculture was done so only to make readers aware of this lilac and other recent NDSU introductions. Reference to the NDSU Research Arboretum, NDSU research extension centers, urban forests in Grand Forks, Fargo or Bismarck, and at the Ames, IA Plant Introduction Station was done for experimental testing only and only at the

NDSU Research Arboretum. The claimed cultivar was not distributed to any of the other locations listed above.

In paragraph four, the Examiner has requested information as to whether any of the research centers or nurseries purchased the tree for field trial and, if not, if there were any secrecy agreements made to prevent the release of the tree to the public. Applicant submits that none of the research centers purchased the tree for field trials. The nurseries which tested the claimed cultivar did so under a Material Transfer Agreement, which included confidentiality provisions as discussed above.

The Examiner has objected to the disclosure under 37 CFR 1.163(a) and 35 U.S.C. §112, first paragraph.

In paragraph "A," the Examiner has requested a brief description of how the new variety is distinguished from its parents. Applicant has amended the specification to include this information. Withdrawal of this objection is respectfully requested.

In paragraph "B," the Examiner has requested the name of the color chart referenced in the specification. Applicant has amended paragraph [008] of the specification to include this information. Withdrawal of this objection is respectfully requested.

In paragraph "C," the Examiner has requested a botanical description of the lenticels on the trunk. Applicant has added new paragraph [0011] to the specification to include this information. Withdrawal of this objection is respectfully requested.

In paragraph "D," the Examiner has requested the color designation of the lenticels in paragraph [0012] (now paragraph [0013]). Applicant has amended the specification to include this information. Withdrawal of this objection is respectfully requested.

In paragraph "E," the Examiner has requested the number of lenticels per given area. Applicant has amended the specification to include this information in new paragraph [0011]. Withdrawal of this objection is respectfully requested.

In paragraph "F," the Examiner has requested the shape of the branch lenticels and surface texture of the branch. Applicant has amended the specification to include this information. Withdrawal of this objection is respectfully requested.

In paragraph "G," the Examiner has requested a botanical description of the leaf buds such as size, shape, number of scales, color designation and leaf scar shape. Applicant has amended the specification to include this information. Withdrawal of this objection is respectfully requested.

In paragraph "H," the Examiner has requested clarification of the color designation in paragraph [0013] (now paragraph [0014]). Applicant has amended the specification to clarify the color designation. Withdrawal of this objection is respectfully requested.

In paragraph "I," the Examiner has requested a botanical description of the petiole including the surface texture, diameter, and color designation. Applicant has amended the specification to include this information. Withdrawal of this objection is respectfully requested.

In paragraph "J," the Examiner has requested a description of the floret size, including length and diameter, flower type, petal number and petal size. Applicant respectfully requests to submit this information at a later time because the trees are not blooming at the present time.

In paragraph "K," the Examiner has requested the calyx's shape, average size, and color designation. Applicant respectfully requests to submit this information at a later time because the trees are not blooming at the present time.

In paragraph "L," the Examiner has requested the lastingness, blooming period and fragrance of the bloom. Applicant respectfully requests to submit this information at a later time because the trees are not blooming at the present time.

In paragraph "M," the Examiner has requested a botanical description of the reproductive organs such as number of stamens and pistils, lengths of the filaments and pistil, pollen color, and color designation of the filaments, anthers, style and stigma.

Applicant respectfully requests to submit this information at a later time because the trees are not blooming at the present time.

In paragraph "N," the Examiner has requested clarification of the color designation in paragraph [0015] (now paragraph [0016]). Applicant has amended the specification to clarify the color designation. Withdrawal of this objection is respectfully requested.

In paragraph "O," the Examiner has requested the color designation of the immature capsule. Applicant respectfully requests to submit this information at a later time because the trees are not producing capsules at the present time.

In paragraph "P," the Examiner has requested the surface texture of the capsules. Applicant has amended the specification to include this information. Withdrawal of this objection is respectfully requested.

In view of the amendments to the specification, withdrawal of the objections to the disclosure under 37 C.F.R. 1.163(a) and 35 U.S.C. §112, first paragraph, is respectfully requested.


Attached hereto are a marked-up version and a clean version of the changes made to the specification by the current amendment. The attached pages are captioned **"Version with markings to show changes"** and **"Clean version of substitute specification."**

The Examiner has rejected claim 1 under 35 U.S.C. §112, first and second paragraphs, as not being supported by a clear and complete botanical description of the plant. Applicant has amended the specification to provide a clearer and more complete botanical description of the plant. Withdrawal of this rejection is respectfully requested.

In view of the above amendments and remarks, it is submitted that the claim satisfies the provisions of 35 U.S.C. §112. Reconsideration of this application and early notice of allowance is requested.

Application No. 10/804,526
Amendment dated November 24, 2004
Reply to Office Action dated August 24, 2004

Page 6

RESPECTFULLY SUBMITTED,					
NAME AND REG. NUMBER	Kenyon L. Schuett, Reg. No. 44,324				
SIGNATURE				DATE	November 24, 2004
Address	Jondle & Associates P.C. Suite 200, 9085 East Mineral Circle				
City	Centennial	State	CO	Zip Code	80112
Country	U.S.A.	Telephone	303-799-6444	Fax	303-799-6898